



**Attorney General  
Betty D. Montgomery**

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March 4, 1998

Magalie R. Salas, Secretary  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

RE: CC Docket No. 96-45, *In the Matter of the Federal-State Joint Board on Universal Service Reconsideration Petition of the Pennsylvania Public Utility Commission Memorandum Opinion and Order of January 2, 1998*

Dear Secretary Salas:

Enclosed please find the original and four copies of the **Comments of the Public Utilities Commission of Ohio** in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope.

Thank you for your assistance in this matter.

Respectfully submitted,

**Betty D. Montgomery**  
Attorney General

A handwritten signature in cursive script, appearing to read "Tanisha L. Lyon".

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )

Federal-State Joint Board on )  
Universal Service )

CC Docket No. 96-45

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**COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO  
IN SUPPORT OF THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION'S  
PETITION FOR RECONSIDERATION**

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**INTRODUCTION**

By these comments, the Public Utilities Commission of Ohio (PUCO) expresses its support for the Pennsylvania Public Utility Commission's (PaPUC) Petition for Reconsideration (Petition) filed before the Federal Communications Commission (FCC) on February 2, 1998. Accordingly, the PUCO encourages the FCC to adopt the PaPUC's proposed four-part test for evaluating current and future requests for waivers from the MSA-Goldsmith definition of "rural area" contained in section 54.5 of the FCC's rules.

**DISCUSSION**

In its May 8, 1997 Universal Service Order, the FCC initiated the development of both the Rural Health Care and the Schools & Libraries federal universal service funds. In that same Order, the FCC also identified the method by which health care facilities, schools and libraries would be designated as "rural" in order to qualify for a particular level of federal support. Specifically, the FCC ruled that

"rural areas" should be defined in accordance with the definition adopted by the Department of Health and Human Services' Office of Rural Health Policy (ORHP/HHS). ORHP/HHS uses the Office of Management and Budget's Metropolitan Statistical Area (MSA) designation of metropolitan and non-metropolitan counties, adjusted by the most recent Goldsmith Modification, which identifies rural areas within metropolitan counties (the MSA-Goldsmith definition).

On January 2, 1998, the FCC's Common Carrier Bureau (CCB) issued a Memorandum Opinion and Order denying the PaPUC's September 30, 1997 Request for Waiver from the MSA-Goldsmith definition. The waiver request was submitted on behalf of nine Pennsylvania counties. While considered rural pursuant to other relevant measures (*e.g.*, a lower primary care physician to population ratio, and significantly fewer hospitals and hospital beds compared to other counties classified as urban), these counties failed to qualify as rural under the MSA-Goldsmith definition. The CCB stated in its Order that the request was denied because the PaPUC failed to demonstrate good cause for justifying the waiver.

On February 2, 1998, the PaPUC filed its Petition, entreating the CCB to grant reconsideration based on new evidence, and further, to adopt a four-part test proposed by the PaPUC for the purpose of evaluating current and future requests for waivers from the MSA-Goldsmith definition. According to the PaPUC, counties that meet all four proposed criteria would be granted a waiver from the MSA-Goldsmith definition in order to qualify for rural status per the federal funds. The four criteria recommended by the PaPUC are as follows: 1) A state must show that the county is less than 50% urbanized as defined by the U.S. Census Bureau; 2) A

state must demonstrate that the county contains no "central city" as defined by the U.S. Census Bureau; 3) A state must show the existence of prior state commitments to the county (such as education or health care initiatives) based on the county's rural status; and 4) A state must provide other corroborating evidence that tended to establish that the county was different from an urban county.

In addition to proposing the four-part test, the PaPUC's Petition advanced several arguments supporting its request that the CCB both adopt the test and grant the requested relief. Of these arguments, the PUCO finds three particularly compelling: 1) the MSA-Goldsmith definition imposes a disproportionately adverse effect on states east of the Mississippi River; 2) the maximum financial impact that could result by adopting the four-part waiver test is minimal relative to the size of the Health Care and Schools & Libraries funds; and 3) the inability of non-urban counties to otherwise qualify as rural under the MSA-Goldsmith definition conflicts with the "comparable rates" requirement in Section 254 of the Telecommunications Act of 1996 (Act).

The PaPUC Petition presented information from the Center for Rural Pennsylvania (CRP), which reveals that a number of other states have counties that would qualify as rural pursuant to the four-part test, but do not under the MSA-Goldsmith definition. In southeastern Ohio, for example, Washington County is designated metropolitan by the FCC's definition, and is not identified by the Goldsmith modification. However, not only does Washington County satisfy the first two criteria of the proposed four-part waiver test, but it also receives funds through various programs of the United States Department of Agriculture's Center

for Rural Development. According to the CRP data, 229 counties nationwide are subject to this predicament, and 77% of these counties are in states that lie east of the Mississippi River.

Regarding the potential costs associated with the FCC's adoption of the four-part waiver test, the PaPUC put forth evidence indicating a maximum dollar increase in Rural Health Care and Schools & Libraries discounts equal to 3% and 3.4%, respectively. These figures assume that every county capable of qualifying for a waiver pursuant to the four-part test would successfully acquire one.

Finally, the PaPUC notes that the difficulty encountered by many states in applying the MSA-Goldsmith definition to acquire "rural" designations for non-urban counties will force health care providers, schools and libraries within such counties to pay rates for telecommunications and information services that are not comparable to rates paid for similar services in urban counties. The PaPUC contends that this effect, as well as the regional imbalance that will occur as the result of a strict adherence to the MSA-Goldsmith definition, are unintended consequences that are inconsistent with the universal service goals contemplated in Section 254 of the Act.

As the PaPUC indicated, the four-part test it proposes is neither meant to replace nor impugn the overall appropriateness of the MSA-Goldsmith definition set forth by the FCC. However, based on the evidence submitted in the PaPUC's Petition, the PUCO respectfully suggests that the MSA-Goldsmith approach does not accurately identify every county warranting a rural designation, and that its shortcomings, albeit relatively few in number, appear to disproportionately impact a par-

ticular geographic area of the United States. As such, the PUCO finds the waiver test proposed by the PaPUC to be a reasonable and reliable method, not to invalidate the MSA-Goldsmith definition, but to complement it, and to facilitate the FCC's efforts to identify those areas of the nation with health care providers, schools and libraries most in need of universal service support from the federal funds.

### **CONCLUSION**

For the reasons stated above, the PUCO supports the PaPUC's Petition for Reconsideration and strongly encourages the FCC to adopt the four-part waiver test proposed by the PaPUC within its Petition. The PUCO wishes to thank the FCC for the opportunity to comment on this matter.

Respectfully submitted,

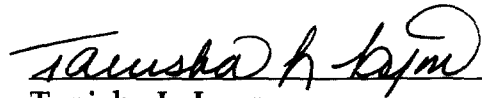
**Betty D. Montgomery**  
Attorney General

A handwritten signature in black ink, appearing to read "Tanisha L. Lyon", is written over a horizontal line.

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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Comments of the Public Utilities Commission of Ohio in Support of the Pennsylvania Public Utility Commission's Petition for Reconsideration** was served by regular U.S. mail, postage prepaid, or hand-delivered upon the following parties of record this 4th day of March, 1998.



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